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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDRE D. McCLENDON,
Petitioner,
v.
JAMES TILTON, Director,
California Department of Corrections
and Rehabilitation,
Respondent.

No. C 09-0647 MMC (PR)
**ORDER DIRECTING RESPONDENT
TO SHOW CAUSE WHY PETITION
FOR WRIT OF HABEAS CORPUS
SHOULD NOT BE GRANTED**

On February 13, 2009, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Thereafter, the Court granted respondent’s motion to dismiss the petition as a “mixed” petition that contained both exhausted and unexhausted claims, and directed petitioner either to file an amended petition that included only his exhausted claims and omitted the unexhausted claims, or to file a request for a stay of this matter for the purpose of his exhausting his unexhausted claims in state court.

Now pending before the Court is petitioner’s amended petition from which he has stricken the unexhausted claims.

Good cause appearing, the Court orders as follows:

1. The Clerk shall serve by certified mail a copy of this order and the amended petition (Docket No. 11), along with the exhibits lodged in support thereof, upon respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.

United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

1 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
2 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
4 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
5 and serve on petitioner a copy of all portions of the state trial record that have been
6 transcribed previously and that are relevant to a determination of the issues presented by the
7 petition.

8 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
9 the Court and serving it on respondent within **thirty (30)** days of the date the answer is filed.

10 3. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
11 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
12 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
13 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
14 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
15 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
16 the date any opposition is filed.


17 4. Petitioner is reminded that all communications with the Court must be served on
18 respondent by mailing a true copy of the document to respondent's counsel.

19 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
20 Court and respondent informed of any change of address and must comply with the Court's
21 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
22 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

23 6. Upon a showing of good cause, requests for a reasonable extension of time will be
24 granted as long as they are filed on or before the deadline they seek to extend.

25 IT IS SO ORDERED.

26 DATED: January 26, 2011

27 
28 MAXINE M. CHESNEY
United States District Judge